

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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ASHEVILLE, N.C.

JUN - 8 2005

Clerk, U. S. Dist. Court
W. Dist of N. C.

No. 05-270
CA-04-70

F I L E D: 6/6/05

In Re: GLENN HARRISON ANDREWS,

Movant.

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O R D E R
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Glenn Harrison Andrews moves for authorization under 28 U.S.C. § 2244 (2000) to file a second or successive 28 U.S.C. § 2254 (2000) petition. District court records support his assertion that his previous § 2254 petition was dismissed without prejudice for failure to exhaust state remedies. The gatekeeping provisions of § 2244 are inapplicable because Andrews' previously filed habeas petition was dismissed without prejudice. See In re Goddard, 170 F.3d 435, 438 (4th Cir. 1999) (citing cases in which postconviction proceedings dismissed on certain procedural grounds were not counted in determining whether a later motion is successive); see also Camarano v. Irvin, 98 F.3d 44, 46-47 (2d Cir. 1996) (holding petition filed after dismissal without prejudice for failure to exhaust state remedies without adjudication on the merits is not

second or successive petition). Because the petition Andrews now seeks to file is not a second or successive habeas corpus application within the meaning of § 2244(b), we deny this motion as unnecessary.

FOR THE COURT,

/s/ Patricia S. Connor
Clerk